

In the Matter of

**The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)**

and

**The *INSURANCE COUNCIL OF BRITISH COLUMBIA*
(“Council”)**

and

**VICTORIA FORD ALLIANCE LTD.
dba VICTORIA MITSUBISHI
dba JAGUAR VICTORIA/LAND ROVER VICTORIA
dba SUBURBAN MOTORS
dba GLENOAK FORD SALES
(the “Agency”)**

and

**PARMINDER SINGH ATWAL
(the “Former Nominee”)**

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Agency and the Former Nominee to dispute an intended decision, dated March 5, 2015, pursuant to sections 231, 236, and 241.1 of the Act.

The subject of the hearing was set out in a Notice of Hearing dated October 9, 2015.

A Hearing Committee heard the matter on November 6, 2015, and presented a Report of the Hearing Committee to Council at its January 12, 2016 meeting.

Council considered the Report of the Hearing Committee and made the following order pursuant to sections 231, 236, and 241.1 of the Act:

1. The Agency is fined \$10,000.00.
2. The Former Nominee is fined \$2,000.00.
3. The Agency is assessed Council’s investigative costs of \$1,025.00.

4. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine and investigative costs no later than **April 12, 2016**. If the Agency does not pay the ordered fine and investigative costs in full by this date, the Agency's general insurance licence is suspended as of **April 13, 2016**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

5. A condition is imposed on the Former Nominee's general insurance licence that requires him to pay the above-ordered fine no later than **April 12, 2016**. If the Former Nominee does not pay the ordered fine in full by this date, the Former Nominee's general insurance licence is suspended as of **April 13, 2016**, without further action from Council and the Former Nominee will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This order takes effect on the **12th day of January, 2016**.



Brett Thibault
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(the “Act”)
(S.B.C. 1996, c. 141)

AND

VICTORIA FORD ALLIANCE LTD.
dba VICTORIA MITSUBISHI
dba JAGUAR VICTORIA/LAND ROVER VICTORIA
dba SUBURBAN MOTORS
and GLENOAK FORD SALES
(the “Agency”)

AND

PARMINDER SINGH ATWAL
(the “Former Nominee”)

Date: November 6, 2015
9:30 a.m.

Before: Ruth Hoyte Chair
Frank Leong Member
Darlene Hyde Member

Location: Suite 300, 1040 West Georgia Street
Vancouver, British Columbia V6E 4H1

Present: David McKnight Counsel for Council
Rajiv K. Gandhi Counsel for the Agency and Former
Nominee

BACKGROUND AND ISSUES

As set out in the Notice of Hearing, the purpose of the Hearing was to determine whether the Agency and the Former Nominee acted in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance, by permitting an unlicensed individual to engage in insurance activities on behalf of the Agency between October 2012 and September 2013.

Council initially reviewed the allegations at its meeting on February 17, 2015, which resulted in the issuance of an intended decision, dated March 5, 2015.

In response to the intended decision, the Agency and the Former Nominee requested a hearing pursuant to section 237(3)(b) of the Act. The Hearing Committee has the authority to determine if the Agency and the Former Nominee are able to carry on the business of insurance in a competent, trustworthy, and financially reliable manner, in good faith, and in accordance with the usual practice of the business of insurance.

The Hearing Committee was constituted pursuant to section 223 of the Act, and this is a Report of the Hearing Committee as required pursuant to section 223(4) of the Act.

EXHIBITS

- | | |
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| Exhibit 1 | Agreed Statement of Facts |
| Exhibit 2 | Council's Book of Documents |

EVIDENCE

The matter before the Hearing Committee related to the penalty only, as the Agency and the Former Nominee accepted the facts as set out in Council's March 2015 intended decision. The facts of this matter, which are not in dispute, are as follows:

Both the Agency and the Former Nominee hold general insurance licences restricted to the sale of Globali, an anti-theft insurance policy from Trisura Guarantee Insurance Company. The product can be sold by Agency staff who are properly licensed with Council.

The Agency was originally licensed with Council between 2001 and 2005, holding a general insurance licence, restricted to the sale of third-party vehicle warranty products. When a licence exemption was introduced under the Act for motor vehicle dealers involved in the sale of third party vehicle warranties, the Agency allowed its licence to expire.

The Agency reapplied for a licence in May 2010, when it became involved in the sale of a vehicle anti-theft product.

The Former Nominee was a nominee of the Agency between May 2010 and March 2014. The Former Nominee continues to be licensed at the Agency as a Level 1 general insurance salesperson ("Salesperson"). At the time the Former Nominee was the Agency's nominee, he was also a senior business manager with the Agency.

Between May 2010 and July 31, 2012, an individual was licensed as a Salesperson (the "Employee"). When the Employee went on maternity leave, she elected not to submit her 2012 annual filing to Council and her Salesperson licence was terminated in July 2012. When the Employee returned from maternity leave, the Agency did not require her to reinstate her Salesperson licence, but allowed her to engage in the sale of insurance products. Between October 13, 2012 and September 30, 2013, while the Employee was unlicensed, she sold 98 insurance products.

In May 2013, the Agency became aware that the Employee was unlicensed and directed her to reapply for her Salesperson licence. After submitting her licence application, but before a licence was issued, the Employee was advised by Council on four occasions, between June and September 2013, that she was not licensed to engage in any insurance activities. This information was communicated to the Employee via telephone conversation on two occasions, as well as by letters sent in August and September 2013. The Agency was also aware of Council's correspondence with the Employee advising her that she was not licensed.

After the Agency became aware of the fact that the Employee was unlicensed, it continued to permit the Employee to engage in insurance activities.

In September 2013, Council sent a letter to the Employee and the Former Nominee advising that the Employee's licence application had not been approved, and that she did not hold a licence. Upon receiving the letter, the Former Nominee forwarded it to the Agency management.

Following this incident, and the subsequent relicensing of the Employee, an inspection of the Agency was conducted by Council. At that time, the Former Nominee stated that he was unaware of the duties of a nominee and was not sure why the Agency management had appointed him to the position. The Agency subsequently reviewed its processes and replaced the Former Nominee with another individual at the Agency, whose responsibilities included overseeing the licensed individuals at the Agency. The Agency also reorganized its oversight of licensees to ensure it was in compliance with all licensing matters.

In its submissions to the Hearing Committee, Mr. Gandhi, legal counsel for the Agency and the Former Nominee, stated there was little objection to the majority of the disciplinary actions posed by Council in its intended decision from March 2015. More specifically, Mr. Gandhi stated that the Agency and the Former Nominee were prepared to accept the fine proposed against the Former Nominee and the assessment of the investigative costs against the Agency, but took issue with the \$10,000.00 fine proposed against the Agency.

Additionally, Mr. Gandhi argued that the \$10,000.00 fine was not consistent with the offense that occurred or with previous Council decisions. Mr. Gandhi argued that the Agency did not act intentionally with a mind to breaching Council's Rules or the Act. Mr. Gandhi argued this should be taken into consideration in determining appropriate penalty in this matter.

FINDINGS AND RECOMMENDATIONS OF THE HEARING COMMITTEE

The Hearing Committee acknowledged that the issues at hand were not in dispute. It found that the Agency and the Former Nominee allowed an unlicensed employee to engage in multiple insurance transactions over a 12-month period.

The Agency and the Former Nominee do not dispute that it was their responsibility to ensure that only licensed staff engage in insurance activities. The Hearing Committee accepts that the Agency has subsequently taken steps to ensure it operates in accordance with the Act and Council Rules. One of these steps involved replacing the Former Nominee with another individual within the organization who has direct supervisory responsibilities over the licensed staff at the Agency.

The Hearing Committee noted that the Former Nominee does not dispute the facts above and is prepared to accept the fine that had been proposed in Council's intended decision.

The Agency also accepts the facts as set out above, but disputes the proposed penalty recommended in the intended decision.

The Hearing Committee gave consideration to a number of points. First, it noted that between October 2012 and May 2013, it appears that the Agency, the Former Nominee, and the Employee were not aware that the Employee was not licensed. The Hearing Committee accepted that the unlicensed activity arose as a result of the Employee being on maternity leave during the 2012 annual filing period. Because the Employee was on maternity leave, the Employee did not submit her 2012 annual filing to Council, resulting in the termination of her Salesperson licence on July 28, 2012.

However, the Hearing Committee noted that, as early as May 2013, the Agency and the Former Nominee were made aware of the fact that the Employee was not licensed. The Employee was permitted to continue to engage in unlicensed insurance activity for another four months. Once it was first learned that the Employee was not licensed, had the Agency and the Former Nominee acted in a timely manner, to prevent the Employee from engaging in any further insurance activities, it is likely that no disciplinary action would have occurred, or if it had, it would have been substantially less than what was proposed by Council in its intended decision.

However, the Agency and the Former Nominee's failure to take any action to stop the Employee's unlicensed activity, once it became aware of it, represents a significant failure on the part of the Agency to properly supervise its insurance activities. This failure is even greater when it is noted that the Agency received additional notification from Council about the Employee's unlicensed status after it first became aware of it in May 2013, and it still took no action to stop the unlicensed activity.

The Hearing Committee noted that the Agency argued that it was never specifically told by Council to stop the Employee from engaging in insurance activities, only that she was not licensed to sell insurance. The Hearing Committee found this comment to be of no relevance. The Hearing Committee believes that the Agency and the Former Nominee should have known, that without a licence, the Employee could not, and should not, engage in any insurance activities and should have taken immediate steps, once it became aware the Employee was not licensed, to ensure that no further insurance activity was conducted by the Employee. If the Agency was unclear of its responsibilities, Council should have been contacted for further clarification. The Hearing Committee saw no evidence to suggest the Agency took the unlicensed activity by the Employee seriously.

The Hearing Committee determined that, from the outset, the Agency did not appear to take heed of its responsibilities; noting that the Former Nominee had stated he was not clear of his duties or why he was appointed as the nominee, and did not have the authority to oversee the activities of the licensees of the Agency. The Hearing Committee found that the Agency's actions demonstrated it did not take its responsibilities as a licensee seriously.

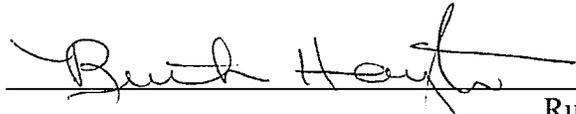
The Hearing Committee feels it is important that a strong message be sent to licensees, particularly to agencies, as their primary responsibility is to ensure the agency and all its licensed and unlicensed staff are acting in accordance with the Act. The Hearing Committee concluded that the Agency and the Former Nominee failed to act in a competent manner and in accordance with the usual practice of the business of insurance, when they knew, or ought to have known, that an Agency employee was engaging in unlicensed insurance activity on behalf of the Agency.

The Hearing Committee concluded that Council's proposed disciplinary action, as set out in Council's intended decision, is appropriate and recommends Council issue an order accordingly:

1. The Former Nominee be fined \$2,000.00.
2. The Agency be fined \$10,000.00.
3. The Agency be assessed Council's investigation costs, totalling \$1,025.00.

On the issue of hearing costs, the Hearing Committee considered whether it would be appropriate to assess the hearing costs in this case. Even though it is not recommending a change in the disciplinary decision as set out in the intended decision, and the Agency attended the hearing solely for the purpose of arguing penalty, the Hearing Committee felt that the assessment of hearing costs would not be appropriate in this situation.

Dated in Vancouver, British Columbia, on the 23 day of **December, 2015**.



Ruth Hoyte
Chair of Hearing Committee